

MEMO ENDORSED



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
NEW YORK REGIONAL OFFICE  
200 VESEY STREET, SUITE 400  
NEW YORK, NY 10281-1022

November 25, 2015

Via Email to SullivanNYSDChambers@nysd.uscourts.gov and ECF EDS SDNY

Hon. Richard J. Sullivan  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2104  
New York, New York 10007

DOCUMENT  
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DATE FILED: 11-25-15

**Re: SEC v. Zachary Zwerko and David L. Post (14-cv-8181-RJS)**

Dear Judge Sullivan:

We represent the Plaintiff, Securities and Exchange Commission (the "Commission"), in this action. We write in response to the Court's January 30, 2015 Order staying this matter pending resolution of the parallel criminal action (United States v. Post, et ano., 14-cr-715-AKH) and October 16, 2015 Order by Memo Endorsement, which "So Ordered" our undertaking to provide a status report by November 25 (Docket Entries 12, 23). The Defendants and the staff of the Division of Enforcement have reached an agreement in principle as to settlement terms that the staff will propose the Commission accept through a formal recommendation process. If the Commission approves the settlement, we will submit the requisite documentation for the Court's consideration. In any event, the parties will report back to the Court in approximately 60 days by January 29, 2016.

The parallel criminal case is now resolved. As previously reported, both Defendant Post and Defendant Zwerko have pleaded guilty to all counts of their respective Informations. Defendant Zwerko was sentenced on October 13, 2015, and Defendant Post was sentenced on November 12, 2015.

Also as previously reported, on October 13, 2015 Judge Hellerstein conducted a Fatico hearing to determine the amount of Defendant's Post's illegal trading profits that were reasonably foreseeable to Defendant Zwerko, made findings by a preponderance of the evidence on that issue, and imposed a criminal sentence on Defendant Zwerko. Specifically, Judge Hellerstein found that all of Defendant Post's illegal profits in one TD Ameritrade account were reasonably foreseeable to Defendant Zwerko, in the amount of approximately \$646,000. Among the evidence that Judge Hellerstein relied upon in making that finding, the Judge credited Mr.

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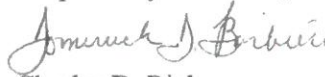
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Post's testimony and discredited Mr. Zwerko's contradictory testimony. Judge Hellerstein imposed a term of imprisonment of 37 months, which was at the top of the applicable guidelines range of 30-37 months. The Judge also ordered criminal forfeiture in the amount of \$646,000, a criminal fine in the amount of \$50,000, and a three-year term of supervision following the term of imprisonment.

On November 12, 2015, Judge Hellerstein handed down Defendant Post's criminal sentence. While Defendant Post was subject to the same guidelines range as Defendant Zwerko, following a motion by the United States pursuant to Section 5K1.1 of the guidelines, the Court sentenced Defendant Post principally to a term of imprisonment of 6 months, two years of supervised release, forfeiture in the amount of \$737,628, and a criminal fine of \$50,000.<sup>1</sup>

If the Court has any further questions, the parties are available for a conference.

Respectfully submitted,



Charles D. Riely

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cc (via email):

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IT IS HEREBY ORDERED THAT the parties shall jointly submit a status letter to the Court by January 29, 2016.

SO ORDERED

Dated:

11/25/15

  
RICHARD J. SULLIVAN  
U.S.D.J.

<sup>1</sup> The difference in the forfeiture amounts ordered as to the Defendants was due to a second, side account that the trader, Defendant Post, employed as a side pocket, of which Defendant Zwerko, the tipper, was unaware.